

_____ in the amount of \$ _____ in payment of the fee under 37 C.F.R. § 1.17(i), and

- ☐ a. I hereby state that each item of information contained in this Information Disclosure Statement was cited in a communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this Information Disclosure Statement. 37 C.F.R. § 1.97(e)(1), or
- ☐ b. I hereby state that no item of information in this Information Disclosure Statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to my knowledge after making reasonable inquiry, no item of information contained in this Information Disclosure Statement was known to any individual designated in 37 C.F.R. § 1.56(c) more than three months prior to the filing of this Information Disclosure Statement. 37 C.F.R. § 1.97(e)(2).
- ☐ 4. Relevance of the non-English language document(s) is discussed in the present specification.
- ☐ 5. The document(s) was/were cited in a corresponding foreign application. An English language version of the foreign search report is attached for the Examiner's information.
- ☐ 6. A concise explanation of the relevance of the non-English language document(s) appears below:
- ☒ 7. The Examiner's attention is directed to co-pending U.S. Patent Application No. 09/536,663, filed March 27, 2000, U.S. Patent Application No. 10/174,505, filed June 17, 2002, U.S. Patent Application No. 10/123,779, filed April 16, 2002, U.S. Patent Application No. 09/815,589, filed March 23, 2001, U.S. Patent Application No. 10/753,069, filed January 8, 2004. The identification of these U.S. Patent Applications is not to be construed as a waiver of secrecy as to those applications now or upon issuance of the present application as a patent. The Examiner is

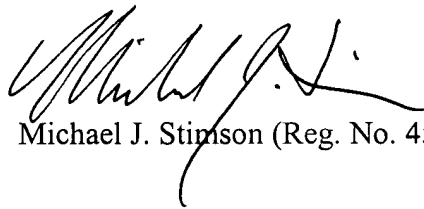
respectfully requested to consider the cited applications and the art cited therein during examination.

- ☐ 8. Copies of the documents were cited by or submitted to the Office in Application No. _____, filed _____, which is relied upon for an earlier filing date under 35 U.S.C. § 120. Thus, copies of these documents are not attached. 37 C.F.R. § 1.98(d).

It is respectfully requested that the Examiner initial and return a copy of the enclosed PTO-1449, and to indicate in the official file wrapper of this patent application that the documents have been considered.

The U.S. Patent and Trademark Office is hereby authorized to charge any fee deficiency, or credit any overpayment, to our Deposit Account No. 08-3038 referencing docket number 00322.0007.NPUS00.

Respectfully submitted,



Michael J. Stinson (Reg. No. 45,429)

Date: 9/21/04

HOWREY SIMON ARNOLD & WHITE, LLP
2941 Fairview Park Drive, Box 7
Falls Church, VA 22042
(202) 783-0800



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Gastineau, *et al.*

Application No.: 09/536,258

Filed: March 27, 2000

For: **Hedging Exchange Traded Mutual
Funds or Other Portfolio Basket
Products**

Confirmation No.: 3646

Art Unit: 3628

Examiner: Charles, Debra

Atty. Docket: 00322.0007.NPUS00

Information Disclosure Statement

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SEP 23 2004

GROUP 3600

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Listed on accompanying Form PTO/SB/08a are documents that may be considered material to the examination of this application, in compliance with the duty of disclosure requirements of 37 C.F.R. §§ 1.56, 1.97 and 1.98.

Where the publication date of a listed document does not provide a month of publication, the year of publication of the listed document is sufficiently earlier than the effective U.S. filing date and any foreign priority date so that the month of publication is not in issue. Applicants have listed publication dates on the attached PTO/SB/08a based on information presently available to the undersigned. However, the listed publication dates should not be construed as an admission that the information was actually published on the date indicated.

Applicants reserve the right to establish the patentability of the claimed invention over any of the information provided herewith, and/or to prove that this information may not be prior art, and/or to prove that this information may not be enabling for the teachings purportedly offered.

This statement should not be construed as a representation that a search has been made, or that information more material to the examination of the present patent application does not

exist. The Examiner is specifically requested not to rely solely on the material submitted herewith. It is further understood that the Examiner will consider information that had been cited by or submitted to the U.S. Patent and Trademark Office in a prior application relied on under 35 U.S.C. § 120. 1138 OG 37, 38 (May 19, 1992).

Applicants have checked the appropriate boxes below.

- ☐ 1. This Information Disclosure Statement is being filed within three months of the U.S. filing date OR before the mailing date of a first Office Action on the merits. No statement under 37 C.F.R. § 1.97(e) or fee is required, or
- ☒ 2. This Information Disclosure Statement is being filed more than three months after the U.S. filing date AND after the mailing date of the first Office Action on the merits, but before the mailing date of a Final Rejection or Notice of Allowance, or action that otherwise closes prosecution in the application, and
 - ☐ a. I hereby state that each item of information contained in this Information Disclosure Statement was cited in a communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this Information Disclosure Statement. 37 C.F.R. § 1.97(e)(1), or
 - ☐ b. I hereby state that no item of information in this Information Disclosure Statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to my knowledge after making reasonable inquiry, no item of information contained in this Information Disclosure Statement was known to any individual designated in 37 C.F.R. § 1.56(c) more than three months prior to the filing of this Information Disclosure Statement. 37 C.F.R. § 1.97(e)(2), or
 - ☐ c. Attached is our Check No. _____ in the amount of \$_____ in payment of the fee under 37 C.F.R. § 1.17(p).
- ☐ 3. This Information Disclosure Statement is being filed more than three months after the U.S. filing date and after the mailing date of a Final Rejection or Notice of Allowance, but on or before payment of the Issue Fee. Attached is our Check No.



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WASHINGTON, DC 20004-2402
PHONE 202.783.0800
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September 21, 2004

Commissioner for Patents
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Alexandria, VA 22313-1450

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GROUP 3600

Re: U. S. Patent Appl. No. 09/536,258
Filed: March 27, 2000
For: Hedging Exchange Traded Mutual Funds or Other Portfolio Basket
Products
Inventors: G. Gastineau, et al.
Our Ref: 00322.0007.NPUS00

Sir:

The following documents are forwarded herewith for appropriate action by the U.S. Patent and Trademark Office:

1. Information Disclosure Statement;
2. Form PTO-1449 (3 pages) with 21 attached reference; and
3. Return postcard.

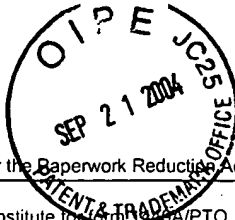
It is respectfully requested that the attached postcard be stamped with the filing date of these documents and returned to our courier.

The U.S. Patent and Trademark Office is hereby authorized to charge any fee deficiency, or credit any overpayment, to our Deposit Account No.08-3038 referencing docket number 00322.0007.NPUS00. If extensions of time under 37 C.F.R. § 1.136 other than those otherwise provided for herewith are required to prevent abandonment of the present patent application, then such extensions of time are hereby petitioned. A duplicate copy of this letter is enclosed.

Respectfully submitted,

Michael J. Stimson (Reg. No. 45,429)

Enclosures



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Substitute for PTO Form 1001

**INFORMATION DISCLOSURE
STATEMENT BY APPLICANT**

(Use as many sheets as necessary)

Sheet 1

of 3

Complete if Known

Application Number	09/536,258
Filing Date	March 27, 2000
First Named Inventor	G. Gastineau, et al.
Art Unit	3628
Examiner Name	Charles, Debra
Attorney Docket Number	00322.0007.NPUS00

U. S. PATENT DOCUMENTS

Examiner Initials*	Cite No. ¹	Document Number	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		Number-Kind Code ² (if known)			
	1	US- 6,047,270	04-04-2000	Joao	
	2	US- 6,061,662	05-09-2000	Makivic	
	3	US- 6,061,663	05-09-2000	Bloom	
	4	US- 6,088,685	07-11-2000	Kiron	
	5	US- US 2002/0091616	07-11-2002	Bloom	
	6	US- US 2002/0184126	12-05-2002	McIntyre, Jr	
	7	US- US 2003/0126062	07-03-2003	Gilbert	
	8	US- US 2004/0044505	03-04-2004	Horwitz	
	9	US- US 2004/0049448	03-11-2004	Glickman	
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SEP 23 2004

GROUP 3600**FOREIGN PATENT DOCUMENTS**

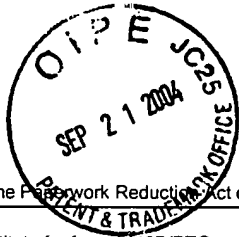
Examiner Initials*	Cite No. ¹	Foreign Patent Document	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	T ⁶
		Country Code ³ Number ⁴ Kind Code ⁵ (if known)				
	10	WO 02/084435 A2	10-24-2002	Kholer		

Examiner Signature	Date Considered
--------------------	-----------------

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. ¹ Applicant's unique citation designation number (optional). ² See Kinds Codes of USPTO Patent Documents at www.uspto.gov or MPEP 901.04. ³ Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). ⁴ For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. ⁵ Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. ⁶ Applicant is to place a check mark here if English language Translation is attached.

This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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PTO/SB/08b (08-03)

Approved for use through 06/30/2006. OMB-0651-0031

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STATEMENT BY APPLICANT**

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Sheet 2

of 3

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Application Number	09/536,258
Filing Date	March 27, 2000
First Named Inventor	G. Gastineau, et al.
Art Unit	3628
Examiner Name	Charles, Debra
Attorney Docket Number	00322.0007.NPUS00

NON PATENT LITERATURE DOCUMENTS

Examiner Initials*	Cite No. ¹	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.	T ²
	11	B. Rosenberg "Extra-Market Components of Covariance Among Security Prices" Research Program in Finance Working Paper RPF-013, 1-45, 1973	
	12	B. Rosenberg "Common Factors in Security Returns: Microeconomic Determinants and Macroeconomic Correlates", Seminar on the Analysis of Security Prices, May 13-14, 1976	B. Ros enb
	13	MAR Headlines ; In Business "Mopex ups ante in ETF patent challenge" Last visited on April 25, 2002	
	14	[Random -bits] Gregory Aharonian on Open end mutual fund securitization process patent; pages 1-4; last visited April 25, 2002	
	15	Gregg Greenberg "What's Next for ETFs?", The Street.com, pages 1-2	
	16	T. Laswing "Active ETF Inching Toward Reality" Ignites.com, June 10, 2004	
	17	T. Bernard " Getting Personal: Active ETF Filing May Be On Horizon" Dow Jones News Service, June 23, 2004	
	18	I. Clary "Actively Managed ETFs on Horizon" Securities Industry News, June 28, 2004, Copyright (c) Thomson Media Inc.	
	19	U.S. Securities and Exchange Commission, " SEC Concept Release: Actively Managed Exchange - Traded Funds" http://www.sec.gov/rules/concept/ic-25258.htm ; last visited on 08/24/2004	
	20	Ameritrade; Ameritrade Exchange -Traded Funds-ETF Center: Education; " Explore the essentials of ETFs"; pages 1-4, 2004	

Examiner
SignatureDate
Considered

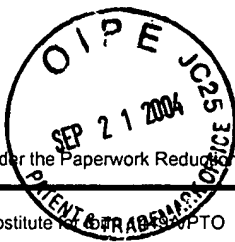
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¹ Applicant's unique citation designation number (optional). ² Applicant is to place a check mark here if English language Translation is attached.

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**INFORMATION DISCLOSURE
STATEMENT BY APPLICANT**

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Complete if Known

Application Number	09/536,258
Filing Date	March 27, 2000
First Named Inventor	Gastineau
Art Unit	3628
Examiner Name	Charles, Debra
Attorney Docket Number	00322.0007.NPUS00

Sheet 3 of 3

NON PATENT LITERATURE DOCUMENTS

Examiner Initials*	Cite No. ¹	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.	T ²
	21	Ameritrade; Ameritrade Exchange -Traded Funds-ETF Center; "Could Exchange Traded Funds Be Right For You?"; pages 1-2, 2004	
<div>RECEIVED SEP 23 2004 GROUP 3600</div>			

Examiner
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¹ Applicant's unique citation designation number (optional). ² Applicant is to place a check mark here if English language Translation is attached. This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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